

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3508-03
Bill No.: HCS for HBs 1654 & 1156
Subject: Elderly; Medicaid; Nursing and Boarding Homes; Health Dept.
Type: Original
Date: March 13, 2002

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
General Revenue*	(Unknown less than \$6,209,424)	(Unknown less than \$7,415,807)	(Unknown less than \$7,520,474)
Total Estimated Net Effect on <u>All</u> State Funds*	(Unknown less than \$6,209,424)	(Unknown less than \$7,415,807)	(Unknown less than \$7,520,474)

* Does not include unknown amounts relating to Sections 187.010 and 187.028.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Unemployment Compensation Admin.	(\$10,828)	\$0	\$0
Unemployment Compensation Trust	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	(Unknown exceeding \$10,828)	(Unknown)	(Unknown)

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Local Government	(Exceeds \$100,000)	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 20 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Labor and Industrial Relations (DOL)** stated the proposal provides contributing employers, who are currently charged for benefit payment because an individual was not discharged for misconduct connected with the work, will not be charged for benefit payment if the employer was required by law to discharge the individual, because the individual was placed on a disqualification list after being hired.

Unemployment benefits are paid from the Unemployment Compensation Trust Fund (UCTF). The UCTF is funded by all contributing employers and by employer payments for benefit charges. Although the proposal would not change the amount of benefits paid, it no longer provides the charging mechanism for replenishing the fund. The cost of benefits would reduce the balance of the UCTF, which would contribute to future rate increases to all contributing employers if the balance reaches certain levels.

The Division of Employment Security (DES) is not able to identify current claims that meet the proposed conditions to estimate and project the amount of impact to the UCTF. The negative impact would also depend on the weekly benefit amounts payable, the number of weeks claims and other unknown factors.

Information Systems estimates the change to the benefit charging provisions would require 220 hours of computer programming to the nonmonetary and charging process in the existing system at \$49.22 per hour. This would be an estimated one-time start-up cost of \$10,828, which would have a negative impact on Federal Funding. The Department's DES assumes the cost for changing and printing notices and pamphlets would be part of the normal cost of operations.

Allowing the Department of Social Services to provide investigative information relating to the circumstances of an individual's separation could better equip the DES when investigating misconduct connected with the work when subject employers are not in a position to provide the information at the time of the DES's investigation. The DES is not able to predict the impact this may have.

Officials from the **Office of State Public Defender (SPD)** stated for the purpose of the proposed legislation, the SPD has assumed that existing staff could provide representation for those cases arising where indigent persons were charged with failure to report elder abuse, or abusing or neglecting a resident of a facility or abusing or neglecting an eligible adult not residing in a facility, or failing to disclose criminal history on an application to work in an elder facility or making a false report of elder abuse or neglect or discloses the time of an unannounced inspection to any person not involved in ASSUMPTION (continued)

inspection or has sexual contact with a resident. The SPD further assumes that existing staff

could provide representation for indigent persons charged with having sexual contact with a resident or client of a facility. In FY 01, the SPD provided representation in 18 elder abuse cases. Passage of more than one similar bill would require the SPD system to request increased appropriations to cover cumulative costs of representing the indigent accused of the additional crimes proposed in the legislation.

Officials from the **Office of the Secretary of State (SOS)** state this bill enacts and modifies various provisions regarding protection of the elderly. The Department of Health and Senior Services and the Division of Medical Services will promulgate rules to implement this bill. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Health and Senior Services and Division of Medical Services could require as many as 62 pages in the *Code of State Regulations*. For any given rule, roughly one-half again as many pages are published in the *Missouri Register* as are published in the Code because cost statements, fiscal notes and notices are not published in the Code. The estimated cost of a page in the *Missouri Register* is \$23.00. The estimated cost of a page in the *Code of State Regulations* is \$27.00. The actual costs could be more or less than the numbers given. The fiscal impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded and withdrawn. The SOS estimates the cost of this legislation to be \$3,813 [(62 pp x \$27) + (93 pp x \$23)].

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Office of State Courts Administrator** and **Department of Mental Health** assume the proposed legislation will not fiscally impact their organizations

Officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** stated the MHP assumes most investigations would be handled by the local law enforcement and, therefore, there is no anticipated fiscal impact.

The MHP's Criminal Records and Identification Division is currently conducting background searches for employment purposes. Thus the impact would be minimal.

Officials from the **Department of Corrections (DOC)** stated the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

ASSUMPTION (continued)

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY 01 average of \$35.78 per inmate per day, or an annual cost of \$13,060 per

inmate) or through supervision provided by the Board of Probation and Parole (FY 01 average of \$3.34 per offender per day, or an annual cost of \$1,219 per offender). Supervision by the DOC through probation or incarceration would result in additional unknown costs to the DOC. Eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

Officials from the **Office of Prosecution Services (OPS)** assume the proposed legislation would result in "costs exceeding \$100,000" based on previous statements provided by the Cole County Prosecuting Attorney's Office (CCPAO) to similar legislation.

In response to similar pieces of legislation, the CCPAO stated that a complete re-write of the existing laws in this subject area would be necessary. The proposal affects the stealing, assault, and abuse statutes. This will require the local prosecuting attorney offices to re-write forms and instructions related to elder abuse. This will also require an update to the computer network being installed in the prosecutors offices statewide. Although the CCPAO could not give a precise estimate of these costs, the costs are expected to exceed \$100,000 in the first year alone.

Oversight will present a cost of over \$100,000 for FY 03 for the various prosecuting attorneys statewide. This cost will be reflected in local government funds for fiscal note purposes.

Officials from the **Department of Health and Senior Services (DOH)** stated that in completing the fiscal estimate of the proposed legislation, the DOH makes the following assumptions:

187.010 Definitions

Contains definitions to be used in Chapter 187.

(5) The definition of an eligible adult has been expanded to include all seniors over age sixty and all adults with a disability. The removal of the language that limits investigative authority and responsibility of the department to vulnerable adults who are in need of protection has substantially altered the responsibility of the department. **The fiscal impact of this revised definition is indeterminate.**

187.015 Rule authority - No fiscal impact

ASSUMPTION (continued)

187.020 - Mandated reporting of abuse/neglect

Changes the professionals named as mandated reporters and requires that reports be made within 24 hours with misdemeanor penalty provision; penalty provision for false reports and offers protection for reporting. Requires facility to report deaths to coroner and agency to track information. **No fiscal impact.**

187.024.2 Abuse/Neglect of Facility Residents - In FY 01, the DOH received 500 reports involving imminent harm. Department personnel were able to commence on-site investigations on 85% or 437 of the reported incidents within 24 hours. However, due to an insufficient number of staff, the department was unable to commence on-site investigations on 13% or 63 reported incidents within 24 hours. **Two Facility Adv Nurse II** are requested to meet this requirement.

187.028 Abuse/Neglect of Eligible Adult Not Residing in a Facility

3. This expands the authority of the state to remove an individual from his/her own home. Currently, there is no system to support out-of-home placement for seniors and adults with disabilities; abuse centers are not generally equipped to accept this population.

The cost of alternative placement is an issue because not all individuals who are victims of abuse/neglect are eligible for or in need of nursing facility placement or hospitalization. Because there is no mention as to where the adult should be placed nor the financial responsibility for an alternative placement, the department assumes that the expense will be borne by the individual or as ordered by the court of jurisdiction. It is the assumption of the department that the cost of alternative placement would not be borne by the department, and therefore, anticipates **no fiscal impact**.

If, however, the sponsor intends for the department to absorb the cost associated with out-of-home placement, **the fiscal impact is indeterminate**.

8. Expands the authority of the department to place any person on the EDL who has been found guilty of abuse/ neglect. **No fiscal impact**.

187.030 Elder Abuse and Law Enforcement

1. The department assumes that current policy requirements for involvement of law enforcement to co-investigate cases in which there is an allegation that a crime has been committed meets the legislative intent of this statute and therefore assumes **no fiscal impact**.

2. Requires the division and law enforcement agencies to require training and cross-training of personnel regarding the proper handling of cases involving elder abuse and cooperatively develop a ASSUMPTION (continued)

checklist for use by division and law enforcement personnel to follow when investigating possible elder abuse.

The department assumes the intent of the sponsor is that Division of Senior Services staff and law enforcement officials statewide will require training on the proper handling of cases involving elder abuse.

There will be a window of time in which the state will have to bring 800+ Division of Senior Services (formerly Division of Aging, Home and Community Services) and Division of Health

Standards Licensure staff (formerly Division of Aging, Institutional Services) and approximately 29,000 law enforcement officials (representing over 1,200 law enforcement agencies) into compliance with the training requirements of the legislation.

The law enforcement agencies will absorb the cost of training law enforcement officials. Once existing law enforcement officers receive the training, the curriculum will be incorporated into the required training for state certification in Missouri. There are 18 law enforcement training academies located throughout the state which offer the required 470 hours of training for all law enforcement officials to become certified.

The DOH will need **one Public Health Manager B1** position to oversee the administrative responsibilities outlined in the bill. The administrator will work with the Highway Patrol, Sheriff's Association, Law Enforcement Training Academies, and other such agencies and associations to fulfill the requirements of joint training, developing accurate curriculum including the mandated checklist to ensure thorough investigations of elder abuse cases and under 660.252 a proficiency exam for use with in-home provider agencies for new applicants. Once the proficiency exam and the law enforcement curriculum has been developed, the administrator will act as the division liaison for law enforcement the over 1,200 law enforcement agencies to ensure that elder abuse training is accurate and revisions are made as necessary in accordance with state laws.

The DOH will conduct training for 800+ employees within the divisions in six to eight sessions across the state (depending on attendance by law enforcement personnel). The DOH estimates that 16 hours of training across three days will be sufficient, requiring two overnights for approximately 40% of the staff. All staff will require meal allowances and some travel reimbursement. Anticipating maximum carpool and state cars usage, mileage is based on an average of 75 miles per car per round trip. The DOH estimates the cost of training as follows (no cost for "trainers" included):

ASSUMPTION (continued)

Total DA Staff/Personnel to be trained	800
Approximate number requiring two overnight accommodations (40%)	320
Hotel Accommodations: \$65.00 per overnight two nights (320 x \$65 x 2)	\$41,600
Meal Allowance: \$23.00 per day; two days (800 x \$23 x 2) + (800 x \$19 x 1/2 day)	\$52,000
Approximate Mileage: (1 car per 3 employees = 800/3 = 267 cars)	
75 average miles round-trip per car (267 x 75 x \$0.315)	\$6,308
Total Estimated Cost of Training DA Staff	<u><u>\$99,908</u></u>

Oversight assumes that training would be held at various sites around the state. Oversight

assumes total costs of \$51,327.

187.034 Immunity for Reporting/Cooperating with Investigation

Adapts current language regarding protection of reporters and individuals cooperating with investigations. **No fiscal impact.**

187.040 EDL

Permits the department to add perpetrators of abuse/neglect by employees of providers licensed under 190 and 197.

The Employee Disqualification List (EDL) is a list of persons who have been finally determined to have recklessly, knowingly, or purposely abused, neglected or financially exploited an elderly or disabled person. Currently the EDL contain the names of 719 persons.

This new legislation will expand the EDL to also include the names of any person employed by providers licensed by chapter 190 and chapter 197. This would include such persons as emergency medical technicians, paramedics, ambulance drivers and employees of hospitals, home health and hospice agencies. The additional names could potentially include any of the currently licensed emergency medical technicians and paramedics (12,957) or any employee of 139 licensed hospitals, 189 licensed home health agencies and 70 licensed hospice agencies.

Before a person's name can be added to the EDL, they are entitled to due process that may include a hearing conducted by the department. To ensure the DOH is able to conduct hearings in a timely manner, we believe an **additional hearings officer** as well as **clerical support** is needed.

187.050 Misappropriation of property or funds

The department assumes that law enforcement agencies will determine the fiscal impact for receiving and processing reports of misappropriation and/or falsification.

ASSUMPTION (continued)

Mandates the reporting, investigation by the department, and permits the department to add to the EDL any perpetrator finally found to have misappropriated funds or property of an eligible adult and any person that has falsified service delivery documents. Imposes criminal penalties and permits the department to share information with relatives/significant others of the eligible adult. **No fiscal impact.**

187.080 EDL Statute

Adapts current language and contains some new language governing the EDL process. The DOH anticipates **no significant fiscal impact.**

187.084 Criminal Background Checks

Adapts language from current statute governing requirements for criminal background checks.

The division anticipates **no fiscal impact**.

187.087 Confidentiality of Reports

Adapts current language regarding confidentiality of reports.

2. New subsection requires that copies of reports resulting in employees being placed on the disqualification list be provided to the Division of Employment Security within the Department of Labor and Industrial Relations upon request. The department believes current resources are sufficient to allow for provision of copies of reports to the Division of Employment Security. The DOH anticipates **no significant fiscal impact**.

187.090 Investigative Authority of the Department Director

Grants authority to the department director for necessary testimony and evidence in court proceedings and outlines the penalty for failure to comply. The DOH anticipates **no fiscal impact**.

187.100 Telephone Check-In Pilot

Requires the division to establish a telephone check-in pilot project in one area of the state for purpose of documenting in-home employees times and services. The division, in collaboration with Division of Medical Services, is currently conducting a pilot program called "Telephony". Approximately 25 provider agencies are voluntarily participating in an area covering approximately three-quarters of the state. Telephony allows in-home employees to clock in and out of the client's home recording actual time and services provided. Approximately one-quarter of the state is prevented from participation as these areas do not have caller identification available. According to the projections of the telephone companies, it is anticipated that the additional areas will not have caller identification systems until the year 2003.

ASSUMPTION (continued)

Participating provider agencies buy and develop their own systems. The systems range in price from \$7,000 to \$75,000 depending on the type of software and hardware that must be purchased by the agency. Upon evaluation of the pilot program, the divisions will determine the effectiveness of implementing this program statewide, however, to mandate the use of the system by all agencies would be extremely costly to small businesses. The DOH assumes the current pilot sufficiently satisfies the mandate of the proposed legislation and therefore anticipates **no fiscal impact**.

187.102 Cooperation with Department of Mental Health

Requires division staff to cooperate with the Departments of Mental Health in the investigation of abuse and neglect when appropriate. This is currently required by department policy. The DOH anticipates **no significant fiscal impact**.

191.900 - 191.910 Authority of the Attorney General - No fiscal impact.

197.455 Authority related to facilities licensed pursuant to Chapter 197 - No fiscal impact.

198.019 The DOH assumes current staff in our Compliance Unit will be sufficient to document and forward to the appropriate units within the department a listing of those facilities whose compliance history should be considered when issuing or renewing a license. We believe the **fiscal impact of this requirement would not be significant**. However, dependent on the criteria that are established for not licensing a facility, a future request for FTE for the Compliance Unit may be needed.

208.152 Time Limit for DMS Payment to Facilities - Deletes this section. **No fiscal impact.**

210.933 Elder Care Workers and the Family Care Safety Registry

1. Permits elder care providers to access Family Care Safety Registry in lieu of the Criminal Background check required pursuant to 187.084.

2. Mandates elder care providers (effective 1/1/2004) access the Family Care Safety Registry to satisfy the requirements of 187.084. Providers currently under contract with the department will continue to be required to conduct additional background check information as the current prohibition for employment includes crimes such as forgery, fraud, sale or possession of contraband drugs or any felony offense involving violence. This higher hiring prohibition is necessary to ensure protection of the vulnerable adult population who receive services in their private homes.

The Section of Long-term Care Regulation receives an estimated 10,750 requests each month for background information for workers newly employed by elder care providers. Most elder care ASSUMPTION (continued)

employers currently do not utilize the Family Care Safety Registry to obtain this background screening information. The Family Care Safety Registry will be required to employ **six (6) additional health program representatives** to respond to these additional requests in accordance with 210.933, RSMo. The response includes providing background screening information to include criminal history, child abuse/neglect, employee disqualification lists maintained by DOH and DMH and foster parent licensure.

Two Office Support Assistants-Keyboards will be required to process the paperwork and provide clerical support.

344.050 Administrative Hearings Commission - No fiscal impact.

491.076 Admissibility of Statements by Seniors or Disabled Adults - No fiscal impact.

565.200 Sexual Contact by Owner/Employee of a Skilled Nursing Facility - No fiscal impact.

660.030 Failure to Report and Privileged Communication - No fiscal impact.

660.050 Authority of the Division of Aging - Incorporates new Chapter 187. No Fiscal impact.

660.051 The DOH assumes the proposed legislation requires all statements of deficiencies, identical to those posted in the facility, to be available on the DOH Internet web site for certified and state licensed skilled nursing facilities, intermediate care facilities, and residential care facilities Is and IIs (1,250+ facilities). The legislation also requires the DOH web site to provide a link to the federal web site that provides a summary of facility surveys conducted over the last three years and information on how to obtain copies of completed facility surveys. Additionally, the web site shall include a notation on any survey which is in dispute.

The DOH will need **one (1) additional Computer Information Technologist II** position to ensure information provided on the web site is current; provide technical support and maintenance of the portion of the DOH web site related to the 1,250+ providers and their related statements of deficiencies; and be responsible for systems management, configuration, administration and troubleshooting activities including support of state level communication protocols and database functions.

ASSUMPTION (continued)

660.071 Creation and Distribution of New Aging Publication -

The department is required to distribute a comprehensive publication encompassing the MO Guide for Seniors, the Long-Term Care Facility Directory, and additionally, all companies, organizations, and facilities providing services for older adults who wish to be listed, and including information about where to obtain inspection and survey information, current licensure status and other quality related information categorized by both services and location.

Currently, the department has no appropriation specifically designated for the Mo Guide for Seniors. During FY99, the former division of aging utilized existing EE funds to print only a limited supply (35,000 copies) of the eighty-eight page Mo Guide For Seniors at \$0.75 each for a total of \$26,250. The new publication, which is to include a listing of all public or private companies or organizations providing services for older adults, will be a substantially larger publication than the current Senior Guide. The department assumes that the majority of those providing services to older adults will wish to be listed, including long-term care facilities, in-home services providers, home health agencies, adult day care programs, senior centers, hospices, hospitals, durable medical equipment providers, pharmaceutical companies, insurance companies.

Based on information obtained from the Division of Tourism about their official travel guide, the

department anticipates that the new publication will be about 350 pages; we anticipate more listings than the travel guide and in consideration of the targeted audience for the guide we will use a larger type font. The department will contract for the typesetting, printing, development of a mailing list and mailing of the guide. We estimate printing 125,000 copies of the guide on a quarterly basis to allow for updates to the information, with the first printing in FY04; in FY03 the department will develop the request for proposal, evaluate the responses and award the contract. The department has no method of directly collecting money from providers for advertising in the guide; therefore, it is assumed that the printing contractor will also solicit advertising and the money collected for ads will be utilized to cover the final contract cost to the department.

660.252 Confidentiality/Release of Records - No fiscal impact.

660.270 Entry Warrants - No fiscal impact.

660.401 Adult Day Care

1. Requires the development of an Adult Day Care program that does not have a rehabilitative component. The Division of Medical Services (DMS) has amended the Aged and Disabled Waiver to include an adult day health care program which provides a basic level of adult day care services without ASSUMPTION (continued)

the rehabilitative component provided by a licensed professional therapist. Increases in available options does not impact the department's workload. The DOH anticipates **no significant fiscal impact.**

2. Requires separate reimbursement for Adult Day Care transportation. The DOH anticipates the cost for Medicaid reimbursement for transportation will be submitted by the Department of Social Services, Division of Medical Services. Additionally, the Division of Senior Services will need funds to reimburse centers providing transportation to spenddown Medicaid recipients during periods of Medicaid ineligibility to allow clients to attend day care without interruption in services.

According to DMS, there are currently 655 clients per month utilizing the adult day health care program with an anticipated growth of 76 clients (based upon the average growth in users from FY 99 through FY 01). It is estimated 75% of the adult day care clients will require transportation assistance. DMS estimates transportation costs average \$6.00 per participant and is using the following overall cost computations for all recipients:

FY03 $655+76+76=807 \times 75\%=605 \times \$6.00 \text{ per day} \times 18 \text{ days per month} \times 10 \text{ months}$
=\$653,400.

FY04 $807+76=883 \times 75\%=662; 662 \times \$6.00 \text{ per day} \times 18 \text{ days per month} \times 12 \text{ months}$
=\$857,952.

FY05 $883+76=959 \times 75\%=719; 719 \times \$6.00 \text{ per day} \times 18 \text{ days per month} \times 12 \text{ months}$
=\$931,824

Based on historical data from prior years expenditures, approximately 97% of the total day care program costs are funded through DMS and 3% by the department. DMS reimbursed approximately \$4,735,000 for adult day health care in FY 2000 and the department expended approximately \$142,000. Based upon the above estimated costs for DMS transportation for adult day care programs the department will require **\$20,208 (3%) in FY2003; \$26,535 in FY2004 and \$28,819 in FY2005** to pay costs of the transportation services to spenddown clients during periods of Medicaid ineligibility.

3. Requires revision of licensure standards to allow Adult Day Care Services in Long-term Care Facilities. DOH assumes any fiscal impact would be related to an increase in the number of facilities being inspected as adult day care providers. It is our understanding that some of the rules and regulations related to the adult day care program are federal and may not fall within our scope. Therefore, depending on the number of long-term care facilities seeking admission into the adult day care service program, DOH may need to request additional FTE in the future.

Section 1. Timely Vendor Payments by Long-term Care Facilities - No fiscal impact.

ASSUMPTION (continued)

Section 2. Medical reimbursement rate adjustment when a change in ownership occurs - No impact.

Officials from the **Department of Social Services (DOS) - Division of Medical Services (DMS)** provided the following assumptions related to the proposed legislation:

Section 187.100.1. – Telephone Check-in Project Project:

This section will not have a fiscal impact on the DMS. The following assumptions were used to arrive at this decision. The legislation will not be interpreted to mandate telephony rather to test effectiveness of telephony. The pilot project is not intended to dictate changes to payment policy such as requiring payment for fraction of hours. The DMS assumes any adjustments to the payment policy would only be made as a result of appropriated funding.

Sections 198.082 – Nurse Aide Training:

The proposed legislation will not have a fiscal impact on the DMS. The reimbursement for the training is not changed. Payment for the training is made after the nurse aide has successfully completed the training course and their name has been added to the Missouri Department of

Health
and Senior Services Nurse Assistant Register. The DMS may reimburse the nursing facilities earlier since the training must begin within 120 days of employment instead of 90 days. Also, the on-the-job training component must be completed within 120 days of employment.

Section 660.252 - Medicaid Participation Agreements:

The provision of the bill that requires all Medicaid participation agreements with in-home service providers include a requirement that all in-home service employees receive training on identification and prevention of elder abuse and neglect will not have a fiscal impact on the DMS. Currently there is an administrative regulation (13 CSR 70-91.03) that requires providers to report instances of abuse and neglect. In order for the providers to do this, the providers must train their staff on elder abuse and neglect. The provider agreements can be updated to include the necessary language without a material fiscal impact to the DMS.

This section also requires the participation agreements include facilities to comply with the provision of sections 660.600 to 660.608 regarding access to facilities by ombudsmen or representatives of the office of the state ombudsman for long-term care facility residents. The agreements can be updated to include this language without a material fiscal impact to the DMS.

Section 660.401 Restructure of the Adult Day Care Program (ADHC):

The bill requires the restructuring of the adult day care program to allow for a program that provides a basic level of care without the rehabilitative services and requires that the DMS provide additional reimbursement to providers for the transportation of clients to and from their homes for adult day care.

ASSUMPTION (continued)

No fiscal impact from the requirement that the program be restructured to provide a basic level of care without therapy services. An Adult Day Care Basic program was added to the Elderly and Disabled Waiver in FY 01. The Adult Day Care Basic does not require rehabilitative services provided by a licensed professional therapist.

A fiscal impact is expected from the requirement that transportation be provided to and from the

ADHC. The FY 01 average number of users of the ADHC program is 655 per month; it is projected that 76 additional persons will use the program each year. This is based on the average increase in users from FY 99 to FY 01. It is estimated that 75% of the users of the Adult Day programs will require transportation services. The projected users per month of transportation services:

FY 02 $655 + 76 = 731$

FY 03 $731 + 76 = 807 \times 75\% = 605$

FY 04 $807 + 76 = 883 \times 75\% = 662$

FY 05 $883 + 76 = 959 \times 75\% = 719$

The cost of the transportation is expected to be \$6.00 per day.

The average number of ADHC units (days) per month paid by the DMS is 18 units/days. This has held steady over the past few years. A unit can be up to 10 hours a day.

Total Cost:

FY 03 - $605 \times (\$6.00/\text{day} \times 18 \text{ days/month}) \times 10 \text{ months} = \mathbf{\$653,400}$

FY 04 - $662 \times (\$6.00/\text{day} \times 18 \text{ days/month}) \times 12 \text{ months} = \mathbf{\$857,952}$

FY 05 - $719 \times (\$6.00/\text{day} \times 18 \text{ days/month}) \times 12 \text{ months} = \mathbf{\$931,824}$

The FFP used is 61.23% for all years.

Section 2. NF Rate Adjustment for Change of Ownership:

The DMS analyzed the change of ownerships (CHOWs) from 1998 - 2001. Based on the 1998 - 2000 data (2001 was excluded because the data was incomplete at the time of the analysis), the DMS

calculated the estimated impact, given the current level of CHOWs, by multiplying the maximum rate

adjustment the facility could receive by the facility's estimated Medicaid days for FY 03. A facility

could only receive a rate adjustment if its current rate was less than the industry average rate and its cost per patient day as determined from the cost report subsequent to the CHOW. The maximum rate adjustment was calculated for each eligible facility by determining the difference between the facility's current rate and the lesser of the industry average rate or the facility's cost per patient day.

The average percent of nursing facilities that qualified for a rate adjustment, the average percent of

paid Medicaid days applicable to the increase, and the average rate increase allowed was calculated.

ASSUMPTION (continued)

These figures were applied to the whole nursing facility population, assuming that nursing facilities would change ownership to receive increased reimbursement rates.

The DMS projects the NF rate increase to have a total fiscal impact of \$13,055,463 in FY 03, of \$15,823,891 in FY 04 and \$15,982,131 in FY 05.

Note, federal regulations have limitations on payments relating to changes in ownership. 42 CFR Chapter IV (10-01-00 Edition), § 447.253, states the following: "(2) . . . the State's methods and standards must provide that the valuation of capital assets for purposes of determining payment rates for NFs and ICF/MRs is not to increase . . . solely as a result of a change in ownership, by more than the lesser of – (i) One-half of the percentage increase . . . in the Dodge construction index applied in the aggregate with respect to those facilities that have undergone a change of ownership during the fiscal year; or (ii) One-half of the percentage increase . . . in the Consumer Price Index for All Urban Consumers (CPI-U) . . . applied in the aggregate with respect to those facilities that have undergone a change of ownership during the fiscal year."

Officials from the **Office of Attorney General** did not respond to our request for a statement of fiscal impact.

FISCAL IMPACT - State Government

FY 2003
(10 Mo.)

FY 2004

FY 2005

GENERAL REVENUE

HW-C:LR:OD (12/01)

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
<u>Costs - Department of Corrections</u>			
Additional commitments and parole	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
Total <u>Costs</u> - Department of Corrections	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
<u>Costs - Department of Health and Senior Services</u>			
Personal Service Costs (14 FTE)	(\$380,337)	(\$467,824)	(\$479,517)
Fringe Benefits	(\$136,959)	(\$168,463)	(\$172,674)
Equipment and Expense	(\$256,994)	(\$185,435)	(\$181,924)
ADC Transportation	<u>(\$20,208)</u>	<u>(\$26,535)</u>	<u>(\$28,819)</u>
Total <u>Costs</u> - Department of Health and Senior Services *	<u>(\$794,498)*</u>	<u>(\$848,257)*</u>	<u>(\$862,934)*</u>
<u>Costs - Department of Social Services - Division of Medical Services</u>			
Transportation Costs for Adult Day Care	(\$253,323)	(\$332,628)	(\$361,268)
NF Rate Increase	<u>(\$5,061,603)</u>	<u>(\$6,134,922)</u>	<u>(\$6,196,272)</u>
Total <u>Costs</u> - Department of Social Services	<u>(\$5,314,926)</u>	<u>(\$6,467,550)</u>	<u>(\$6,557,540)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND*	<u>(Unknown less than \$6,209,424)*</u>	<u>(Unknown less than \$7,415,807)*</u>	<u>(Unknown less than \$7,520,474)*</u>

* Does not include unknown amounts relating to sections 187.010 and 187.028

FEDERAL FUNDS

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
<u>Income - Department of Social Services - Division of Medical Services</u>			
Medicaid Reimbursements for Adult Day Care Transportation	\$400,077	\$525,324	\$570,556
Medicaid Reimbursements for NF Rate Increase	<u>\$7,993,860</u>	<u>\$9,688,969</u>	<u>\$9,785,859</u>
Total <u>Income</u> - Department of Social Services	<u>\$8,393,937</u>	<u>\$10,214,293</u>	<u>\$10,356,415</u>
<u>Costs - Department of Labor and Industrial Relations</u>			
<u>Unemployment Compensation Administrative Fund</u>			
Lost Federal Match on Start-up Costs	(\$10,828)	\$0	\$0
<u>Unemployment Compensation Trust Fund</u>			
Uncompensated Unemployment Benefits paid to disqualified employees	(Unknown)	(Unknown)	(Unknown)
Total <u>Costs</u> - Department of Labor and Industrial Relations	(Unknown exceeding \$10,828)	(Unknown)	(Unknown)
<u>Costs - Department of Social Services - Division of Medical Services</u>			
Medicaid Reimbursements for Adult Day Care Transportation	(\$400,077)	(\$525,324)	(\$570,556)
Medicaid Reimbursements for NF Rate Increase	<u>(\$7,993,860)</u>	<u>(\$9,688,969)</u>	<u>(\$9,785,859)</u>
Total <u>Costs</u> - Department of Social Services	<u>(\$8,393,937)</u>	<u>(\$10,214,293)</u>	<u>(\$10,356,415)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	(Unknown exceeding \$10,828)	(Unknown)	(Unknown)

<u>FISCAL IMPACT - Local Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
<u>Costs - Prosecuting Attorneys</u>			

<u>FISCAL IMPACT - Local Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
Upgrades to Computer Systems, Forms and Instruction Changes	Exceeds <u>(\$100,000)</u>	\$0	\$0
ESTIMATED EFFECT ON LOCAL GOVERNMENT FUNDS	Exceeds <u>(\$100,000)</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

The proposed legislation could have a negative economic impact on small businesses as a result of the new requirement related to directing facilities to implement corrective action plans concerning staffing issues and requirements that facilities post statements of deficiencies in the facility.

DESCRIPTION

This substitute modifies the law relating to protection of the elderly. In its major provisions, the substitute: (1) Creates a new chapter on protection of the elderly and transfers several existing statutory sections to this chapter; (2) Expands the list of persons required to report suspected elder abuse to the Department of Health and Senior Services and mandates that suspected abuse be reported within 24 hours; (3) Requires reports of suspected elder abuse to be referred to the appropriate law enforcement agency. Current law requires only substantiated reports to be referred. The department is also required to investigate immediately any report of elder abuse or neglect that involves a threat of imminent harm; (4) Requires the department and law enforcement agencies to cross-train personnel in investigating cases of suspected elder abuse; (5) Requires emergency medical services (EMS) and hospital employees who abuse, neglect, or financially exploit the elderly to be placed on the employee disqualification list; (6) Requires the department to establish a telephone check-in pilot project for in-home services employees by July 1, 2003; (7) Requires the Department of Health and Senior Services and the Department of Mental Health to cooperate in abuse and neglect investigations; (8) Allows the Attorney General to handle Medicare fraud investigations. The substitute also allows the Attorney General to obtain investigative subpoenas and search warrants in connection with investigations of abuse cases; (9) Creates civil penalties for home health agencies; (10) Requires disclosure of financial interests of nursing home owners and operators applying for licensure and renewal of licensure. The substitute also allows the department to deny licensure or renewal based on a review of the facility's compliance history and the owner or operator's compliance history; (11) Authorizes the department, when confronted with violations or deficiencies related to staffing, to implement corrective actions such as staffing ratios, training plans, or plans related to staff supervision; (12) Requires notice of noncompliance of a licensed facility to be given to the Attorney General; (13) Requires facilities to meet or exceed federal requirements concerning the posting of deficiencies; DESCRIPTION (continued)

(14) Allows for revocation of a facility's license when the operator has been cited for failure to comply with a class I standard two times in 24 months or for failure to comply with a class II or

III standard two times in 12 months; (15) Allows the Attorney General to bring an action to recover civil penalties from licensed facilities for violations; (16) Requires nursing assistants employed by a skilled nursing facility or intermediate care facility to complete training within 120 days of being hired; (17) Adds freedom from neglect to the list of rights of long-term care facility residents and extends the time for filing a complaint for violations of a resident's right from 180 days to two years from the date of the alleged deprivation or injury; (18) Allows the department to reduce the frequency of inspections of licensed facilities from twice a year to once a year based on the facility's compliance record; (19) Makes it a class A misdemeanor for a department employee to knowingly disclose the time of an unannounced inspection of a facility licensed by the department and requires the department to terminate his or her employment; (20) Requires elder care providers to access the Family Care Safety Registry for all employee disqualification checks after January 1, 2004; (21) Creates a hearsay exception for elderly and disabled persons in certain cases; (22) Makes it a class B misdemeanor for an owner or employee of a skilled nursing facility or an Alzheimer's special unit to have sexual contact with a resident of the facility or with a client in his or her care. Second or subsequent violations are class A misdemeanors. In addition, sexual intercourse or deviant sexual intercourse in these cases is a class D felony. Second or subsequent violations are class C felonies. An employee who is married to a resident or client and engages in this activity with his or her spouse is exempt from prosecution. Consent of the victim is no defense to prosecution; (23) Prohibits persons from claiming any legal privilege as a defense for failing to report suspected elder abuse, except that the attorney-client privilege may still be claimed; (24) Requires the department to provide certain information and certain links regarding long-term care facilities and facility surveys on its web site; (25) Requires the department to provide a publication that lists all public and private organizations in the state that provide services to the elderly; (26) Mandates the inclusion of certain access and training requirements in all Medicaid participation agreements with in-home services providers and long-term care facilities; (27) Allows investigation reports to be made available without a court order to certain persons; (28) Clarifies when the department can seek an injunction in connection with an investigation; (29) Requires the department to restructure the adult day care program by examining the program's requirements, offering additional reimbursement for transportation to services, and streamlining regulations governing long-term care facilities that offer adult day care services; (30) Requires all payments by long-term care facilities to vendors of essential services to be made within 120 days; and (31) Requires the Division of Medical Services to promulgate rules that include specific provisions relating to an adjustment in the Medicaid reimbursement rate for certain long-term care facilities that change ownership.

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DESCRIPTION (continued)

This legislation is not federally mandated and would not duplicate any other program.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations
Office of State Public Defender
Office of Secretary of State
Office of State Courts Administrator
Department of Mental Health
Department of Public Safety - Missouri Highway Patrol
Department of Corrections
Office of Prosecution Services
Department of Social Services
Department of Health and Senior Services

NOT RESPONDING: Office of Attorney General

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Acting Director
March 13, 2002